

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Kyle William Brenizer Trust, d/b/a/ Kyle
William Brenizer,

Case No. 20-cv-2158 (JRT/TNL)

Plaintiff,

v.

**REPORT &
RECOMMENDATION**

United States of America; United States
Attorney's Office (District of Minnesota);
Erica H. MacDonald in her individual and
official capacity as United States
Attorney; Matthew S. Ebert in his
individual and official capacity as
Assistant United States Attorney; Allison
Ethen in her individual and official
capacity as Assistant United States
Attorney; and Seven Unknown Agents of
the Federal Bureau of Investigation,

Defendants.

On February 22, 2021, this Court directed Plaintiff Kyle William Brenizer to pay an initial partial filing fee. *See generally* ECF No. 7. Brenizer was warned that if he did not pay the initial partial filing fee, this action would be deemed abandoned and it would be recommended that this case be dismissed without prejudice for lack of prosecution. ECF No. 7 at 6; *see* Fed. R. Civ. P. 41(b). Brenizer sought and received an extension of time until May 13, 2021, to pay the initial partial fee. *See generally* ECF Nos. 8, 9. Brenizer was again warned that if he did not pay the initial partial fee, this action would be deemed abandoned and it would be recommended that this case be dismissed without prejudice for lack of prosecution. ECF No. 9 at 2; *see* Fed. R. Civ. P. 41(b).

That May 13, 2021 deadline has passed without any further correspondence or payment from Brenizer. Accordingly, this Court now recommends, consistent with its prior orders, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

[Continued on next page.]

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute.
2. Brenizer's Motion and Affidavit for Permission to Proceed *In Forma Pauperis* (ECF No. 6) be **DENIED AS MOOT**.

Date: June 24¹, 2021

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

*Kyle William Brenizer Trust v.
United States et al.*
Case No. 20-cv-2158 (JRT/TNL)

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).

¹ The Report and Recommendation previously issued, on June 24, 2021, contained an erroneous signature date of June 26, 2021. ECF No. 10 at 3. The Clerk of Court has been directed to mark that filing as being done in error and the Court has reissued its Report and Recommendation with the correct date.